

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, ) No. 8:21CR33  
)  
Plaintiff, )  
)  
vs. )  
)  
MITCHEL D. ABRAHAM, )  
) Omaha, Nebraska  
Defendant. ) October 13, 2021

TRANSCRIPT OF SENTENCING PROCEEDINGS  
BEFORE THE HONORABLE BRIAN C. BUESCHER  
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF: Mr. Donald J. Kleine  
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FOR THE DEFENDANT: Ms. Kelly M. Steenbock  
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Proceedings recorded by mechanical stenography, transcript  
produced with computer.

1 (At 10:40 a.m. on October 13, 2021; with counsel and the  
2 defendant present:)

3 THE COURT: You may be seated.

4 We're on the record in United States of America versus  
5 Mitchel Abraham, Case Number 8:21CR33. This matter comes on  
6 for sentencing with respect to Count I of the indictment,  
7 transportation of a minor with intent to engage in criminal  
8 sexual activity.

9 Counsel, would you please enter your appearances.

10 MR. KLEINE: Good morning, Your Honor. For the  
11 United States, I'm Don Kleine.

12 MS. STEENBOCK: Good morning, Judge. Kelly  
13 Steenbock, Assistant Federal Public Defender, on behalf of  
14 Mr. Abraham, who is here at counsel table with me today.

15 THE COURT: It appears there has been a Rule  
16 11(c)(1)(C) plea agreement in this case.

17 Do the parties still wish for me to accept the plea  
18 agreement? Mr. Kleine.

19 MR. KLEINE: Yes, Your Honor.

20 THE COURT: Ms. Steenbock.

21 MS. STEENBOCK: Yes, Your Honor.

22 THE COURT: I would like to hear allocution before I  
23 decide whether to accept this agreement.

24 Ms. Steenbock, did you receive the Revised Presentence  
25 Investigation Report and the Sentencing Recommendation and have

1       you reviewed those documents with your client?

2               MS. STEENBOCK: Yes, Your Honor.

3               THE COURT: Mr. Abraham, did you also receive the  
4       Revised Presentence Investigation Report and the Sentencing  
5       Recommendation and have you had the opportunity to review those  
6       documents?

7               THE DEFENDANT: Yes, Your Honor.

8               THE COURT: Mr. Kleine, did you receive and review  
9       those same documents?

10              MR. KLEINE: I have, Your Honor.

11              THE COURT: I believe there are no objections to the  
12      report that require resolution. Is that correct, Mr. Kleine?

13              MR. KLEINE: Yes, Your Honor.

14              THE COURT: Ms. Steenbock.

15              MS. STEENBOCK: That's correct.

16              THE COURT: I do adopt the presentence investigation  
17      report without change.

18              I will now address the guideline calculations in this  
19      matter, although I note this is subject to an 11(c)(1)(C) plea  
20      agreement that will impact sentencing in the event that I  
21      accept the agreement.

22              The total offense level is 35 and the criminal history  
23      category is II. The guideline custody range is 188 to 255  
24      months. The guideline range for supervised release is five  
25      years to life. The defendant is ineligible for probation. The

1 fine range is 40,000 to 250,000. Restitution is mandatory but  
2 no request for restitution has been made. The charged conduct  
3 is subject to a JVTa assessment of 5,000 and an AVAA assessment  
4 of up to 50,000 and a special assessment of \$100 is to be  
5 assessed.

6 Have I accurately stated the sentencing guideline  
7 provisions, Mr. Kleine?

8 MR. KLEINE: Yes, Your Honor.

9 THE COURT: Ms. Steenbock.

10 MS. STEENBOCK: Judge, I would object to the AVAA  
11 assessment at this point and we can discuss it later. He was  
12 not convicted of one of the qualifying offenses.

13 THE COURT: Okay. And so, therefore, you're saying  
14 the AVAA assessment is not -- you're saying the AVAA is not  
15 appropriate in this case because of that?

16 MS. STEENBOCK: Yes, Your Honor.

17 THE COURT: Okay. All right. That is so noted and  
18 we can discuss that during allocution.

19 So have I accurately stated the sentencing guideline  
20 provisions but for the -- the objection noted by counsel,  
21 Ms. Sosa?

22 MS. STEENBOCK: Ms. Steenbock. Yes, Your Honor.

23 THE COURT: I'm sorry.

24 MS. STEENBOCK: That's okay.

25 THE COURT: Ms. Sosa was just in here, sorry.

1 MS. STEENBOCK: She was just here, yes.

2 THE COURT: Ms. Steenbock, yes. Thank you.

3 And Mr. Kleine.

4 MR. KLEINE: Yes, Your Honor.

5 THE COURT: All right. So I will now hear allocution  
6 beginning with counsel for the defendant, Ms. Steenbock.

7 MS. STEENBOCK: Pardon? I didn't hear you, Your  
8 Honor.

9 THE COURT: I'm sorry. Now I'll hear allocation  
10 [*sic*].

11 MS. STEENBOCK: Oh, thank you, Your Honor. May I  
12 remove my mask while I speak?

13 THE COURT: You may, please.

14 MS. STEENBOCK: Thank you. Thank you, Judge.

15 I think the Court is interested in how the government and  
16 I reached this plea agreement because it is a little off from  
17 the guideline calculation. I'll tell you this investigation  
18 started and it was charged as a transportation of a minor.  
19 Mr. Abraham does not have a criminal history really to speak  
20 of, and so with the offense conduct, including the enhancements  
21 that applied, his guideline sentence, as charged, would have  
22 been less than the ten-year mandatory minimum.

23 As the investigation unfolded after charging, it came to  
24 both of our attention, both myself and the government's  
25 attention, that there might have been some photographs that

1       were exchanged between the minor victim and my client. I  
2       believe that he indicated as much when he was interviewed by  
3       the police.

4               Mr. Kleine and I talked on several occasions about my  
5       client's age, his lack of criminal history, the fact that there  
6       was no force or threats used to coerce the victim either with  
7       the taking of the photographs or with the transportation to  
8       Nebraska.

9               Ultimately we decided to go above the mandatory minimum  
10       which would have been otherwise appropriate given the fact that  
11       the guideline was below the mandatory minimum but not quite to  
12       the 15 years that would have been required by statute if we had  
13       required the government to get a superseding indictment  
14       charging the exchange of pictures charge.

15              So kind of split the baby, you know? We're giving away a  
16       little bit based on the charge. The government gave away a  
17       little bit to avoid having to go through the forensic efforts  
18       of actually investigating the phone.

19              You know from the presentence report that Mr. Abraham has  
20       a pretty confusing history, I guess, is the best word I would  
21       use to describe it in that he and his sister were both victims  
22       of sexual and domestic abuse of his mother's partner.  
23       Mr. Abraham then went to go live with his father and his  
24       stepmother, and it appears from the records that they did  
25       everything they could to get him intervention, to get him

1 treatment. He was involved in two separate facilities in order  
2 to assist him with dealing with that trauma. Obviously, this  
3 court should be concerned that here we are in this situation,  
4 that the -- the earlier interventions did not suffice.

5 What I will tell you is this is a very significant prison  
6 sentence for a 23-year-old young man. The motivation for the  
7 offense does not appear to be a salacious attempt to entice a  
8 minor. It appears to be motivated primarily by the age  
9 disparity and the ability to maybe get affection more easily  
10 than one could with a -- a peer or a young lady that is more  
11 his age. Mr. Abraham is very immature, he's been unable to  
12 hold a job steady, and so he's not super appealing to young  
13 ladies in their early 20s, and I think that that's how this  
14 relationship built -- built itself in that the victim, who is  
15 young, a little bit of an outsider, Mr. Abraham, who is older  
16 and also a bit of an outsider, saw a common bond.

17 I don't know why the -- the minor victim's family chose to  
18 not respond to requests. It is both mine and I think  
19 Mr. Abraham's sincere hope that she's getting the counseling  
20 she needs. From scrolling her -- through her information --  
21 certainly I -- I don't blame her or anything -- but she -- she  
22 definitely was interested in leaving her family home. She was  
23 not happy and I think from her point of view, this might have  
24 been an answer to that unhappiness.

25 Mr. Abraham since he's been in custody has been a model

1 inmate. He has, while available to him, engaged in treatment,  
2 counseling. While at Douglas County, he was in the God mod and  
3 found some support through that. Unfortunately, he's been  
4 transferred to a couple of different facilities and they just  
5 have not had programming available for him so he spent the  
6 majority of his time reading and mentally preparing himself for  
7 prison.

8 As the Court knows, having certainly had people appear in  
9 front of you who've never been in a prison setting, it's a very  
10 intimidating prospect for Mr. Abraham. He is young. He does  
11 not have a lot of skills to defend himself and so I would ask  
12 the Court to note that he would be in need of protection while  
13 in a prison setting.

14 I'd ask the Court to note his interest and desire to  
15 participate in both substance abuse and also  
16 sex-offender-specific counseling. His goal is do those things  
17 and then also engage in some vocational training so when he  
18 gets out he can be successful and so that he can comply with  
19 the terms and conditions of supervised release.

20 So, Your Honor, we would ask you to go along with  
21 the 11(c)(1)(C) plea agreement. It was well thought out by all  
22 the parties, it considered all of the circumstances, the  
23 guidelines, and as well as my client's lack of criminal history  
24 and lack of violence associated with this offense.

25 If you have any other questions, I'd be happy to address



1       them otherwise I'll submit.

2               THE COURT: Yeah. I would like to hear about the  
3 AVAA assessment and why you don't think it applies and --

4               MS. STEENBOCK: I believe that it applies to  
5 pornography offenses and Mr. Abraham was not convicted of that  
6 offense. The specific offense he was convicted of is  
7 18:2423(a) and that is not listed amongst the crimes that AVAA  
8 applies to.

9               As to the JVTa, I do think that applies to him, but I  
10 think he would qualify as indigent and so I'd ask the Court to  
11 not impose that. The reality is, is that the victim didn't  
12 respond for a request for restitution which I think would  
13 wholly apply but they didn't request restitution. I don't know  
14 why 'cause they certainly had expenses coming down here to  
15 retrieve their daughter. I'm sure that she's involved in  
16 counseling but we can't answer to that.

17               I will say that as far as the financial aspect of it,  
18 Mr. Abraham is going to have expenses associated with  
19 court-ordered treatment when he finishes his prison sentence.  
20 I don't know what his earning capacity is going to be. I'm  
21 going to assume, especially right out of prison, it's not going  
22 to be great, and I think that it is in the best interests of  
23 justice as well that this court not fine him as -- so that he  
24 can spend his resources stabilizing his life and complying with  
25 treatment requirements.

1 THE COURT: Is there any legal reason I can't fine  
2 him?

3 MS. STEENBOCK: No.

4 THE COURT: Okay. Thank you.

5 Mr. Abraham, you do not have to speak but now is the time  
6 for you to address the Court if you wish to say something  
7 before I pronounce a sentence.

8 Would you like to say anything?

9 THE DEFENDANT: I'm really just -- I'm sorry and I  
10 didn't mean any harm. That's it, Your Honor.

11 THE COURT: Okay. Thank you.

12 Before I hear from the government, I just would like to  
13 make a comment on this case. Almost all little kids or -- or  
14 kids in middle school and high school are on Snapchat. This is  
15 a case where the defendant in Nebraska found a girl in  
16 Pennsylvania on Snapchat, drove out and picked up a  
17 15-year-old, drove her back to Nebraska. Within an hour of  
18 picking her up, had sex with her. This is egregious conduct  
19 and this -- and then he took pictures of her, of a child as  
20 well.

21 This could easily be justified as a life sentence. This  
22 is horrible conduct, and I just need to hear from the  
23 government as to why this was pled to 150 months when literally  
24 this would be a -- this could be a life sentence, and I believe  
25 the Eighth Circuit would have no trouble affirming that. So

1 let's -- let's hear it.

2 MR. KLEINE: Sure, Your Honor.

3 Your Honor, as this court -- as this court is aware that  
4 Mr. Abraham is charged with the enticement, and the government  
5 did determine, based upon the conduct and the evidence that we  
6 have, that the guideline range in this case is 121 to 151  
7 months.

8 I don't believe there's evidence that the defendant took  
9 photos of the victim but instead there were Snapchat  
10 communications between the two where the victim sent -- or it's  
11 alleged that the victim sent an image to the defendant.

12 We didn't charge that conduct because there were issues  
13 with that evidence. That's why we're where we're at is because  
14 to lay it out there, we can't get into his phone because of  
15 certain technical issues that prevent us from being able to  
16 establish that evidence, and had we been able to establish that  
17 evidence, we would have charged it.

18 We're not giving him a break because we feel sorry for  
19 Mr. Abraham. We're not giving him a break because we want to  
20 give him a break. Laying it out there on the record, we  
21 charged what we could charge based upon the evidence that we  
22 have. And up until the point that this case was negotiated and  
23 resolved, we still have not been able to get into his phone to  
24 be able to establish that, in fact, he received child  
25 pornography.

1           And so based upon the totality of the circumstances, we  
2           believed that with a guideline range of 121 to 151 months, 150  
3           months, at the high end of that guideline range, is reasonable  
4           and that's why we agreed to that amount of time.

5           I am asking and I do agree with Probation's recommendation  
6           of 30 years of supervised release and I think that is extremely  
7           important as well given his background.

8           THE COURT: Tell me this, I noticed in the plea  
9           agreement that he could be subject to federal charges in other  
10          jurisdictions. Obviously, the -- the documents say he had sex  
11          with her in Pennsylvania.

12          MR. KLEINE: Correct.

13          THE COURT: Could he be charged with having sex with  
14          a 15-year-old in Pennsylvania as well?

15          MR. KLEINE: I think he probably could be.

16          THE COURT: Okay.

17          MR. KLEINE: Now, again, federally there's the  
18          Department of Justice issues which are called the Petite Policy  
19          and things of that nature, but I think that -- yeah, I think he  
20          could be charged in any state where that criminal activity  
21          occurred.

22          THE COURT: Okay. Thank you.

23          I -- After reviewing the underlying facts and hearing  
24          from the prosecution, I very reluctantly accept the plea  
25          agreement. Let me just say that this is a nightmare. This is

1 horrible conduct and, you know, I want to tell you,  
2 Mr. Abraham, without the -- the work of your lawyer, you  
3 literally could have ended up potentially in jail for the rest  
4 of your life for doing this. You were 22 years old at the  
5 time. You know you can't go to Philadelphia and pick up a  
6 15-year-old and go have sex with her. There isn't anyone with  
7 a brain who doesn't know you can't do that.

8 This justifies a life sentence and -- and in federal court  
9 a life sentence means a life sentence. It means you never get  
10 out of jail. That's what it means.

11 Is there any legal reason sentence should not now be  
12 pronounced, Mr. Kleine?

13 MR. KLEINE: No, Your Honor.

14 THE COURT: Ms. Steenbock.

15 MS. STEENBOCK: No, Your Honor.

16 THE COURT: In crafting this sentence, I have  
17 considered all factors outlined under 18 U.S.C. Section  
18 3553(a), including general deterrence, specific deterrence,  
19 protection of the public, the need to avoid unwarranted  
20 sentencing disparities and the specific history and  
21 characteristics of the defendant.

22 The Court has also considered the seriousness of the  
23 conduct, the need to promote respect for the law and the need  
24 to provide just punishment for the conduct at issue.

25 Recognizing that the guidelines are advisory in nature and

1 following the parameters of the Rule 11(c)(1)(C) plea  
2 agreement, I hereby sentence the defendant, Mitchel D. Abraham,  
3 to a term of 150 months of incarceration.

4 Related to incarceration, I recommend the following: That  
5 the Bureau of Prisons allow the defendant to participate in a  
6 500 intensive -- 500-hour intensive drug treatment program or  
7 any similar and available drug treatment program if the  
8 professionals at the Bureau of Prisons find such programming to  
9 be appropriate; the defendant receive educational or vocational  
10 training in accordance with past skills and education; that the  
11 defendant receive or participate in sex offender treatment.

12 With regard to location of incarceration, is there a  
13 recommendation from the defendant?

14 MS. STEENBOCK: Englewood.

15 THE COURT: I will recommend Englewood.

16 Upon the release from prison, the defendant shall be  
17 placed on 30 years of supervised release. I intend to follow  
18 the mandatory and special conditions of supervised release set  
19 out in the Sentencing Recommendation.

20 Do the parties have objections to any of these conditions,  
21 Ms. Steenbock?

22 MS. STEENBOCK: No, Your Honor.

23 THE COURT: Mr. Kleine.

24 MR. KLEINE: No, Your Honor.

25 THE COURT: The special and mandatory conditions are

1 ordered. The standard conditions of supervised release are  
2 also imposed.

3 I am not going to impose a JVTA assessment because the  
4 Revised Presentence Investigation Report indicates the  
5 defendant appears to be indigent. I am not going to impose a  
6 fine under AVAA given Ms. Steenbock's argument with regard to  
7 that.

8 What's happened recently is we've had the federal  
9 government writing checks to those people in federal prison for  
10 some reason, and given that and -- the fact that that could  
11 happen and given the fact of the age of the defendant when he  
12 receives [sic] from jail, I am going to fine him \$10,000. That  
13 is an amount that anyone at the age that the defendant is  
14 released from jail will be able to work off and pay at that  
15 point in time. Get -- With any job that you have, that could  
16 happen so I am going to issue that fine. Also, if -- if the  
17 government decides again to write checks to those in federal  
18 prison, the -- the amount the government gives could be  
19 utilized to pay part of this fine given the circumstances.

20 I'm not going to order restitution because the victim has  
21 not asked for any restitution.

22 The \$100 special assessment will be imposed.

23 The defendant should be given credit for any time served  
24 and shall cooperate in the collection of a DNA sample at the  
25 direction of the probation officer or the Bureau of Prisons if

1 that has not already occurred.

2 That is my judgment and sentence in this case.

3 Mr. Abraham, you limited your right to appeal in your plea  
4 agreement. With regard to any remaining right to appeal, you  
5 could ask to proceed with the fees and costs waived.

6 If you have any questions about that limitation or about  
7 any remaining right of appeal, you should discuss that matter  
8 with your lawyer.

9 Mr. Abraham, I will note that you are now on -- after  
10 you're done with your sentence, you will be on 30 years of  
11 supervised release. There is a very significant chance that I  
12 will still be on the bench a good portion of that 30 years, and  
13 if you get in trouble again, you will come back and see me, and  
14 I will trust you -- I will remember today and I will remember  
15 the unbelievably good deal you just got today.

16 So I hope I never see you again, and I'll even remember 15  
17 years from now when this is all -- when you're out -- out there  
18 again so that's what I'd like to say so the defendant is  
19 remanded --

20 Yes, go ahead.

21 (An off-the-record discussion was had between the  
22 courtroom deputy and the Court.)

23 THE COURT: And I'm going to waive interest on the  
24 fine as well just to make it easier for the government to keep  
25 track of that so there will be no interest on the fine.



1           So the defendant is remanded to the custody of the marshal  
2           to be delivered to the Bureau of Prisons.

3           Is there anything further from the United States?

4           MR. KLEINE: No, Your Honor.

5           THE COURT: Anything from the defense?

6           MS. STEENBOCK: No, Your Honor.

7           THE COURT: We are adjourned.

8           (Adjourned at 11:01 a.m.)

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10                           \* \* \* \* \*

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13           I certify that the foregoing is a correct transcript from  
14           the record of proceedings in the above-entitled matter.

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15                   /s/Rogene S. Schroder  
16                   Rogene S. Schroder, RDR, CRR

October 19, 2021  
Date

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